

Hamilton County LAW LIBRARY

NEWS

Professional legal information, services, and education

December 2021

Department of Labor Limits Non-Tipped Work,

by [Adam J. Rocco](#) and [Michael C. Griffaton](#), Vorys, Sater, Seymour and Pease LLP

On October 28, 2021, the U.S. Department of Labor (DOL) published its Final Rule that limits the amount of time tipped employees can spend in non-tipped activities during periods that an employer utilizes the tip credit. The Rule clarifies that an employer may only take a tip credit for the hours when an employee is doing work that is tip-producing or engaged in tasks that directly support tip producing work.

An employer can take a tip credit only when the tipped employee is performing tip-producing work or when the tipped employee is performing work that directly supports tip-producing work as long as the tipped worker does not spend a substantial amount of time doing tip-supporting work. The Rule defines a substantial amount of time as more than 20% of the hours worked during the employee's workweek or a continuous period of time that exceeds 30 minutes.

The Final Rule becomes effective Dec. 28, 2021.

BACKGROUND

Under the federal Fair Labor Standards Act, tipped employees are those who customarily and regularly receive more than \$30 per month in tips. The FLSA per-

mits employers to take a tip credit equal to the difference between the required tipped cash wage (of at least \$2.13) and the federal minimum wage of \$7.25 (for a maximum tip credit of \$5.12).

The DOL has long recognized through its dual jobs regulation that tipped employees may perform related duties (commonly known as "sidework") that do not directly produce tips. In 1988, however, the DOL decided that, when a tipped employee spends a "substantial amount of time" performing such non-tipped sidework, no tip credit may be taken for that time. This meant the employee was entitled to the full federal minimum wage for that work, rather than the lower tipped wage. Instead of the usual notice-and-comment rulemaking, the DOL divined that 20% constituted a substantial amount of time. Over the last decade, there has been substantial litigation by tipped employees seeking backpay for work that did not involve serving customers, and courts have invoked this DOL policy as the "80/20 rule," even though it was not an actual rule.

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Hamilton County Law Library

Hamilton County
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1000 Main Street
Room 601
Cincinnati, OH 45202
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F:513.946.5264

<http://lawlibrary.hamilton-co.org>

M-F 7am-4pm

Tech Tip: Subscription fee using Credit Card

by Julie Koehne, Systems Librarian

Are you already a subscriber and would like to pay your subscription fee using a credit card? If so, then follow these steps below.

First, go to:

<https://client.pointandpay.net/web/HamiltonCoLawLibraryOH>

Hamilton County LAW LIBRARY
Legal information, services, and education

Step 1: Select Payments Step 2: Review and Submit Step 3: Confirmation and Receipt

Step 1: Select Payments

Please complete the form below. When finished, click the Continue button and you will be asked to review the information for accuracy before your payment is processed.
Note: * indicates a required field.

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Next, select a Payment Type. If you are paying for your entire firm, then select "Firm." If you are paying for yourself, then select "Solo-Public-Individual."

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Payment Type: *	
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In the Description section, enter the name of the person you are paying the subscription fee for and today's date.

NOTE: There is a 2.95% transaction fee administered by our credit card processor that will apply to your payment. For a \$110.00 payment the amount will be \$3.25.

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First Name: *	Last Name: *	
Address Line 1: *	Address Line 2:	
City: *	State: *	Zip Code: *
Phone Number: *	Email Address: *	

Payment Information

Payment Method: *

Credit or Debit Card ▾

Card Number: *



Expiration Date: * (in mm/yy format)

CVV: *

Where
is this
number?

Enter the credit card information in the Payment information section, then click the "Continue" button in the bottom right hand corner.



Step 2: Review and Submit

Please review the details of the items you have selected to pay, along with the fees associated with using this service. When you are ready to submit your payment, please review and accept the Terms and Conditions, and click Submit to send your payment for authorization.

My Bills

Description	Amount
Solo-Public-Individual payment of \$110.00 on Full Name Julie Koehne	\$110.00
Subtotal:	\$110.00
Convenience Fee:	\$3.25
Total Payment:	\$113.25

Customer Information

First Name: Julie
Last Name: Koehne
Address Line 1: 123-HappinessWay
Address Line 2:
City: Bright-City
State: Ohio
Zip Code: 12345
Phone Number: 513-555-1111
Email Address: Emailaddress@email.com

Payment Information

Payment Date: 12/18/2018
Card Type: MasterCard
Card Number: *****2345

Next, review the information you entered, agree to the terms and conditions, and then press the "Submit Payment" button.

Terms and Conditions

CONVENIENCE FEE
Your agency has partnered with a third party service provider to provide you with convenient online payment services via credit card debit card or electronic check. IN ORDER TO USE THIS SERVICE YOU MAY HAVE TO PAY A NON-REFUNDABLE CONVENIENCE FEE IN ADDITION TO THE AMOUNT(S) OWED TO YOUR PAYEE. Please note the service provider (not your Payee) will appear as the merchant of record next to your payment on your bank or credit card statement.

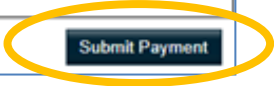
ACCESSIBILITY
This service is accessible through the Internet. In order to use this service you will need a personal computer access to the Internet with an Internet service provider and a web browser which supports this service.

ACCURACY OF YOUR INFORMATION AND BILLING; COMPLETION OF PAYMENT
You are solely responsible for providing accurate and complete information to use this service and for confirming any amount(s) owed to your Payee. Completion of payment is required for this transaction.

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Your payment has been authorized successfully and payment will be processed.

The Hamilton County Law Library thanks you for your payment. For questions about your account, please call 513-946-5300. Credit card payments will show up as Hamilton Co Law Library. Thank you for using our bill payment services.

Please save or print a copy of this receipt for record keeping purposes.

My Bills

Description	Amount
Solo-Public-Individual payment of \$110.00 on Full Name Julie Koehne	\$110.00
Subtotal:	\$110.00
Convenience Fee:	\$3.25
Total Payment:	\$113.25

Customer Information

First Name: Julie
Last Name: Koehne

Last, you will receive the following confirmation to the email you provided previously.

THE FINAL RULE

The Rule creates three categories of work performed by tipped employees and then allows or disallows the tip credit depending on the category in which the work falls: “tip-producing work,” “work that is not part of the tipped occupation,” and “directly supporting work.”

TIP-PRODUCING WORK

The Rule defines tip-producing work to include “all aspects of the work performed by a tipped employee when they are providing service to customers” and for which they are receiving tips. An employer may take the tip credit for all time a tipped employee spends on such work.

The Rule contains a non-exhaustive list of examples of duties that typically are considered tip-producing for servers, bartenders, and bussers. For example, tip-producing duties for servers would include taking orders, making recommendations, and serving food and drink; attending to customer spills; processing payments; and bussing the table during the meal service.

Additionally, whether a duty is tip-producing or, instead, directly-supporting work (see below) depends on when the duty is performed. For example, rolling silverware is tip-producing when done for an existing customer but directly-supporting when waiting for customers to arrive.

UNRELATED WORK

For “work that is *not* part of the tipped occupation,” an employer may not take the tip credit for any of the time spent performing such tasks. This would include, for example, cleaning bathrooms if a server.

DIRECTLY-SUPPORTING WORK

Directly-supporting work is work “either performed in preparation of or otherwise assists the tip-producing customer service work.” According to the DOL, it “is the kind of work that is generally more foreseeable to employers and that employers are more likely to specifically assign.” The Rule pro-

vides a non-exclusive list of duties performed during customer hours, including rolling silverware, setting tables, and stocking bussing stations; refilling condiments; sweeping or vacuuming the dining area; and setting and bussing tables.

An employer may take the tip credit for *directly-supporting* work only to the extent the work does not last for a “substantial amount of time.” An amount of time becomes “substantial” when a tipped employee spends more than 20% of the time during a workweek, or more than 30 consecutive minutes during a shift, in directly-supporting work. Notably, the 20% 30-minute limits apply only to the time that an employee has been paid at the tip credit rate. The Rule provides that if the employee’s work exceeds either the 20% or 30-minute limit, the tip credit is unavailable only for the time that exceeds the 20% or 30 minutes, not the entire shift or workweek.

Idle or down time – the time spent waiting for customers – is considered directly-supporting work, which is subject to the 20% and 30-minute limits. The DOL explains that “the time is being spent in preparation of the customer service, and is therefore properly categorized as directly supporting work.”

CONCLUSION

Employers utilizing the tip credit will need to evaluate their practices and policies to ensure compliance with the Final Rule. Employers also need to be cognizant of state laws that may disallow or further restrict the use of the tip credit. Contact your Vorys lawyer for questions about tip credit compliance under the Final Rule and state laws under which you operate.

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VORYS

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Subscriber Renewals for 2022

We mailed invoices for Hamilton County Law Library's 2022 services for subscribers in late November. We hope that you will renew without a moment's hesitation, given the many services and resources offered by the Law Library. You are welcome to pay in December or wait until January – your choice.

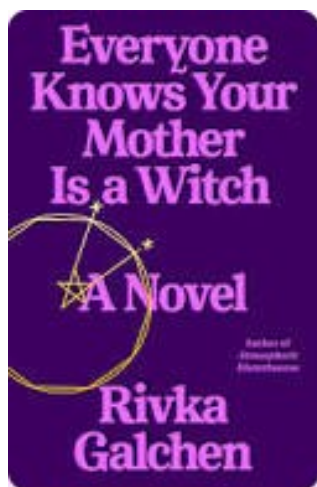
Our librarians appreciate your calls and emails for research support. Subscribers and county officials may request cases, chapters, KeyCite reports, forms, and more. We will send the items you need quickly via email. This service is available to you at no additional charge. We also offer CLEs and training, video conferencing, meeting room use, (including our newly renovated subscriber lounge and conference room suite!) loan of books, coffee, and low-cost photocopying. Our solo attorney and 100% firm subscribers benefit from off-site access to a number of legal information databases.

Thanks for your continued use of the Law Library, whether on-site or from the convenience of your home or office. If you have questions about the invoice or about making the most of your investment, please contact [Lauren Morrison](#).



Payments by Credit Card:

Just a reminder – we are able and happy to take your payment by credit card if you prefer. Simply contact us by phone at 513-946-5300 or email at reference@cms.hamilton-co.org and we'll send you the secure payment link.



Law Library Board Meeting

The Hamilton County Law Library Resources Board will next meet on Wednesday, January 12 at 12pm. Meetings of the Hamilton County Law Library Resources Board are open to the public. The meeting will be held in the Robert S. Kraft Boardroom in the Law Library.

Holiday Open House

New for 2021 – we're bringing back our Holiday Open House, but in a slightly modified format. We've prepared to-go bags for you with treats and a craft to brighten your holiday season! Please stop by the week of December 13-17 to grab a bag to enjoy, while supplies last!



Inclement Weather and other Closings

The Law Library rarely closes due to inclement weather but, as winter approaches, we want you to know how to find out about unplanned closings. When we close for bad weather, we announce it on our [Facebook](#) and [Twitter](#) feeds and will put a banner on the Law Library [website](#).

Book Club

The Hamilton County Law Library Book Club is meeting via Zoom, at 12:00 on Friday, December 17, 2021.

This month's selection is the 2021 novel *Everyone Knows Your Mother is a Witch*, by Rivka Galchen. It's a fictionalized account of an actual witch trial in 1619 Germany, during a plague.

We are very excited to be able to bring you this opportunity.

And, we look forward to seeing you on the 17th!

Sign up [here](#).

Subscriber Benefits

All subscribers have access to the following valuable resources and services:

Circulation privileges to borrow from over 40,000 print volumes for up to six weeks at a time

Access to extensive legal information databases from the Law Library, including Westlaw, Wolters Kluwer Cheetah™, Overdrive e-books, HeinOnline, and Loislaw treatises

Wireless network throughout the Law Library

Polycom videoconferencing

Eight meeting rooms with speaker phones

Professional reference service by our law librarians, available via e-mail, telephone, and in person

Free document delivery by fax or e-mail of print and electronic materials

CLE seminars throughout the year, on legal research and substantive topics

Subscribers' lounge, magazines, daily newspapers, and coffee

Bi-weekly news alerts by practice area

Discounted rates for photocopying

In addition, solos and attorneys whose firm has a subscription have 24 hour remote access to Fastcase.com case law, Aspen/LOISLaw treatises, HeinOnline (for under 50 attorney firms), EBSCOhost, and Wolters Kluwer Cheetah™

Upcoming CLEs—Live Interactive Webinars

Wednesday, December 22, 2021, 12-1 PM

Mindfulness for Professionalism and Civility

Presenter: Attorney Gary Powell

1.0 Professional Conduct credit in OH, 1.0 general credit granted in KY

CLEs on Demand

The Hamilton County Law Library is proud to announce that the following self study CLEs are available in our on-demand library:

Elder Abuse Awareness (1.0 general hour in OH)

Medicaid Planning (1.0 general hour in OH)

Complex Appeals in Ohio (1.0 general hour in OH)

Fastcase 7 (1.0 general hour in OH)

Mediation (1.0 general hour in OH)

2020 Employment Cases in the US Supreme Court (1.0 general hour in OH)

Trademark & Copyright Law in 60 Minutes (1.0 general hour in OH)

CHANGE Court (1.0 general hour in OH)

Legal Issues & COVID-19 (1.5 general hours in OH)

What Does Stress Have to Do With it? (2.5 hours Professional Conduct in OH)

**** NEW—The Law of Boxing** (1.0 hour in OH, and 1.0 hour in KY)

****NEW—Implicit Bias & the Criminal Justice System** (1.0 hour Professional Conduct in OH)

**** NEW— Elder Financial Exploitation & Undue Influence** (1.0 general hour in OH)

**** NEW—Hamilton County Municipal Court Update** (1.0 general hour in OH)

Labor and Employment Law Resources

Law Library subscribers have access to a variety of Labor and Employment Law Resources, including those listed below. If you have questions about these resources, contact the reference staff at reference@cms.hamilton-co.org or 513.946.5300.

ABA journal of labor & employment law
K12 .A23

Advanced employment law seminar
KFO331 .A934 2019

Basics of employment law
KFO331 .B37 2019

Caldwell's Kentucky form book
KFK1268 .C3 2006

Civil rights in the workplace
KF3464 .P48 2018

Covenants not to compete
KF3463 .M347 2018

Create your own employee handbook
HF5549.5.I53 G84 2017

Employment in Ohio
KFO331 .S28

Kentucky employment and labor law: forms and practice manual
KFK1531 .L45 3019

Ohio employment practices law: a practical guide for employers and their legal counsel
KFO331 .S571

Your rights in the workplace
KF3455.Z9 R47 2007

Online Resources

EBSCO

Create Your Own Employee Handbook
Dealing with Problem Employees
Employer's Legal Handbook
Working with Independent Contractors

Fastcase

Business Practice Law Library
Employment Discrimination Law Library
Employment Law Library

HeinOnline

The Basic Law of Employment Discrimination under Title VII of the Civil Rights Act
Employment Contracts
Employment Practices
Equal Employment Opportunity and Employment Programs
Public Employment

Overdrive

Americans with Disabilities Act
Employment Forms and Policies
Principles of Employment Law

VitalLaw (formerly Cheetah)

Fair Employment Practices law
Anti-Discrimination Policy in State Government Employment (Executive Orders)

Westlaw

Baldwin's Ohio Handbook Series Ohio Employment Practices Law
Global Business Law Review
Labor Lawyer
Ohio Employment Law Letter
Ohio Jurisprudence, Employment

Upcoming Events:

Friday, December 17, 2021, 12-1 via ZOOM HCLL Book Club

Wednesday, December 22, 2021, 12-1 via ZOOM, CLE: Mindfulness for Professionalism and Civility

Thursday, December 23 & Friday December 24, 2021, Library Closed

Friday, December 31, 2021 Library Closed



December 2021 Law Library Newsletter

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 - Board Meetings
 - Labor & Employment Law Resources

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